IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Lalit Kumar. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 1135/2006

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Date of Order: December 19, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. D.S. Udawat, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner seeks quashing of proceedings initiated against him under Sections 107, 116 (3) and 151 of the Code.

I have heard learned counsel for the parties. Carefully gone through the material on record.

It is contended by the learned counsel for the petitioner that the notice, as envisaged under Section 111 of the Code was neither made in writing nor served to the petitioner and, therefore, the proceeding initiated against the petitioner is bad in law. Learned counsel has relied on a decision of this Court

in Dinesh Kumar Tailor Vs. State of Rajasthan, 1998 Cr.L.R. (Raj.) 38.

On careful perusal of the order passed by the Sub-Divisional Magistrate, Sojat City, district Pali (for short, "the Executive Magistrate" hereinafter), it appears that on a complaint filed by the Station House Officer, Police Station, Sojat City, the petitioner was arrested and produced before the Executive Magistrate. By the order impugned dated 27-5-2006, the Executive Magistrate directed the petitioner to furnish the personal bond and surety bond in the sum of Rs.10,000/- each for maintaining the peace and tranquility and be of good behaviour for a period of six months.

From a perusal of the order impugned, it appears that the Executive Magistrate recorded that a notice under Section 111 of the Code was read over to the petitioner. Section 111 of the Code provides that when a Magistrate acting under Section 107, Section 108, Section 109 or Section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any, required. A plain reading of Section 111 of the Code makes it clear that the Executive Magistrate, when deems it necessary to require any

person to show cause then he is required to make an order in writing setting forth the substance of the information received and after serving the notice, reduce in writing by which requiring the person to show as to why he be not asked to execute the bonds. In the instant case, no such notice was reduced to writing or served to the present petitioner.

In Dinesh Kumar Tailor Vs. State of Rajasthan (supra), this Court held as under:-

> "Insofar as the question of pendency of present proceedings against the petitioner is concerned, such proceeding may be brought to an end by quashing the order made by the learned Executive Magistrate on 30-7-1997. The record of the learned Executive Magistrate contains no notice purported to have been prepared u/s. 111 Cr.P.C. and to have been explained to the petitioner. What the record of the learned Executive Magistrate contains is the order-sheet, dated 30-7-1997, wherein it is mentioned that a notice u/s 111 Cr.P.C. was read over and explained to the petitioner, who pleaded not guilty to such notice. That is not the requirement of Section 111 Cr.P.C. Section 111 Cr.P.C. provides that when a Magistrate acting under u/s 107, Sec. 108, Sec.109 or Sec. 110 Cr.P.C. deems it necessary to require any person to show cause under such sections, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. The record of the proceedings of the Court of Executive Magistrate does not disclose the compliance of the provisions, contained in Sec. 111 Cr.P.C. As stated above, the alleged notice does not speak of the term for which the order was to remain in force nor of the number, character and class of sureties, which the petitioner was required to furnish. Therefore, on this technical aspect only the notice purported to have been issued to the petitioner under u/s 111 Cr.P.C. by the

> learned Executive Magistrate was required to be quashed and that being simply a procedural irregularity, the learned Magistrate could have been asked to proceed with the disposal of the case according to law. But, on going through the entire record of the case, as was pointed out by Dr. Tiwari to me, I felt convinced that the very foundation of issuing the said notice purported to have been issued u/s 111 Cr.P.C. was legally infirm and unsound."

Keeping in view the decision of this Court in Dinesh Kumar Tailor Vs. State of Rajasthan (supra) and the facts and circumstances of the case, in my view, the proceedings against the petitioner are not sustainable and liable to be quashed. Even otherwise, the period of six months from the date of the order dated 27-5-2006 has already expired and, therefore, the proceedings are liable to be quashed.

In the result, the criminal miscellaneous petition is allowed. The impugned order dated 27-5-2006 passed by the Executive Magistrate in Criminal Misc. Case No. 245/2006 is set aside and the proceedings initiated against the petitioner under Sections 107 and 116 (3) of the Code stand quashed.

(H.R. PANWAR), J.

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